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SENATE

{ REPORT
No. 18 }

PROHIBITING THE TRANSPORTATION OF OBSCENE MATTERS IN INTERSTATE OR FOREIGN COMMERCE

JANUARY 17 (legislative day, JANUARY 8), 1951.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 27]

The Committee on the Judiciary, to whom was referred the bill (S. 27) to prohibit the transportation of obscene matters in interstate or foreign commerce, having considered the same, report favorably thereon, with an amendment, and recommend that the bill, as amended, do pass.

AMENDMENT

On page 2, line 15, strike out the words "be presumptive evidence", and insert in lieu thereof "create a presumption".

PURPOSE OF AMENDMENT

The above amendment is a more accurate use of legal terminology.

PURPOSE OF BILL AS AMENDED

The purpose of this bill is to insert a new section in the Criminal Code (title 18, U. S. C.), to be numbered section 1465, to prohibit the transportation between States of obscene matter by private conveyance.

HISTORY OF THE LEGISLATION

The language of this bill is identical (except for the technical amendment included above) with that of S. 2812, Eighty-first Congress, which passed the Senate unanimously on April 19, 1950.

STATEMENT

Existing law (secs. 1461 and 1462 of title 18, U. S. C.) creates the offense of transporting obscene matter either through the mails or by common carrier. The actual offense is defined as the depositing of such prohibited material for mailing or with a common carrier for interstate transportation. As the law now stands, it is not a crime to transport such prohibited matter except by mail or common carrier.

There can be no quarrel with the premise that the trafficking in such obscene matter on a commercial basis should be discouraged. Nothing good could come of the permitting of such trafficking in any possible way; therefore, since the traffickers are aware of the loophole in the law permitting them to transport such matter in private conveyances, the door on such activities should be closed firmly by the enactment of this bill.

The principal problem confronting the committee was the number of articles the transportation of which would create the presumption that they were being so transported and "are intended for sale or distribution * * *." While the committee does not mean to justify or condone the possession and transportation of even one of such articles, it necessarily must recognize that some persons do carry on their person one or more of such articles without any thought of sale, resale, or to be shown or distributed to any individual under any circumstances. Of necessity, the number of such articles necessary to raise the presumption of handling on a commercial basis must be arbitrary. As a guaranty against an innocent person being convicted upon such a presumption, it is expressly provided that "* * * such presumption shall be rebuttable."

Attached hereto and made a part of this report are two paragraphs of a letter of January 12, 1949, to the chairman of this committee, Hon. Pat McCarran, from the Justice Department, which read as follows:

Information contained in the files of this Department indicates that purveyors of pornographic and licentious material are fully aware of this weakness in the law, and transport such obscene wares by means of automobile and by carrying it on their persons across State lines, realizing that in so doing they are completely immune to Federal prosecution. Such traffickers often peddle their lewd products to minors and consequently have aggravated the juvenile delinquency problem. The Department has also been advised by a law-enforcement agency that the circulation of obscene photographs depicting persons of mixed races in lascivious activity has been a factor contributing to racial tension. Moreover, it has been noted that, during the course of investigations by this Department of white-slave traffic cases, obscene literature is often obtained from the subjects as well as the victims. These and other factors indicate that the distribution of obscene matter is instrumental in inciting the commission of sex crimes and other acts of immorality and vice.

It is therefore recommended that legislation be enacted for the purpose of reducing the foregoing evil which appears to be more widespread because of this deficiency in the Federal laws.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the standing rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics):

SEC. 1465. Transportation of obscene matters for sale or distribution.

Whoever knowingly transports in interstate or foreign commerce for the purpose of sale or distribution, any obscene, lewd, lascivious, or filthy book, pamphlet, picture,

film, paper, letter, writing, print, silhouette, drawing, figure, image, cast, phonograph recording, electrical transcription or other article capable of producing sound, or any other matter of indecent or immoral character, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

The transportation as aforesaid of two or more copies of any publication or two or more of any article of the character described above, or a combined total of five such publications and articles, shall create a presumption that such publications or articles are intended for sale or distribution, but such presumption shall be rebuttable.

When any person is convicted of a violation of this Act, the court in its judgment of conviction may, in addition to the penalty prescribed, order the confiscation and disposal of such items described herein which were found in the possession or under the immediate control of such person at the time of his arrest.



